

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

2010 MAR 23 PM 2:34

DEPUTY CLERK *JKP*

39261

JANE DOE 1, by and through JANE DOE)
1's MOTHER AND FATHER as Parents)
and natural guardians, and JANE DOE 1's)
MOTHER AND FATHER, Individually,)
and JANE DOE 2, by and through JANE)
DOE 2's MOTHER AND FATHER as)
Parents and natural guardians, and JANE)
DOE 2's MOTHER AND FATHER,)
Individually and JANE DOE 3, by and)
through JANE DOE 3's MOTHER AND)
FATHER as Parents and natural)
guardians, and JANE DOE 3's MOTHER)
AND FATHER, Individually.)
Plaintiff,)

v.)

TERRELL INDEPENDENT SCHOOL)
DISTRICT and KELLY RODGERS,)
SUPERINTENDENT,)

Defendants.)

NO. 3-10CV0578-N

ORIGINAL COMPLAINT

PLAINTIFFS, Jane DOE 1, by and through Jane Doe 1's Mother and Father as parents and natural guardians, and Jane Doe 1's Mother and Jane Doe 1's Father, individually, and Jane DOE 2, by and through Jane Doe 2's Mother and Father as parents and natural guardians, and Jane Doe 2's Mother and Jane Doe 2's Father, individually and Jane DOE 3, by and through Jane Doe 3's Mother and Father as parents and natural guardians, and Jane Doe 3's Mother and Jane Doe 3's Father, individually, hereby sues DEFENDANTS, TERRELL INDEPENDENT SCHOOL DISTRICT and KELLY RODGERS, SUPERINTENDENT, and states the following:

JURISDICTION, VENUE AND PARTIES

1. JANE DOE 1, is a resident of Kaufman County, Texas and is not *sui juris* by virtue of her minority. JANE DOE 1's MOTHER and JANE DOE 1's FATHER, individually, and as natural guardians and parents of JANE DOE 1, are residents of Kaufman County, Texas and are over the age of 18 and is otherwise *sui juris*. This action is brought anonymously to protect the identities of JANE DOE 1 and her mother and father as this matter concerns the rape and sexual assault of a minor.

2. JANE DOE 2, is a resident of Kaufman County, Texas and is not *sui juris* by virtue of her minority. JANE DOE 2's MOTHER and JANE DOE 2's FATHER, individually, and as natural guardians and parents of JANE DOE 2, are residents of Kaufman County, Texas and are over the age of 18 and is otherwise *sui juris*. This action is brought anonymously to protect the identities of JANE DOE 2 and her mother and father as this matter concerns the rape and sexual assault of a minor.

3. JANE DOE 3, is a resident of Kaufman County, Texas and is not *sui juris* by virtue of her minority. JANE DOE 3's MOTHER and JANE DOE 3's FATHER, individually, and as natural guardians and parents of JANE DOE 3, are residents of Kaufman County, Texas and are over the age of 18 and is otherwise *sui juris*. This action is brought anonymously to protect the identities of JANE DOE 3 and her mother and father as this matter concerns the rape and sexual assault of a minor.

4. Defendant, Terrell Independent School District of Kaufman County, Texas (the "District"), is a political subdivision or agency of Kaufman County, Texas. The District operates and maintains J.W. Long Elementary School in Kaufman County, Texas ("Long"). JANE DOE 1, 2, and 3 were students at J.W. Long Elementary School at all relevant times.

5. Defendant Dr. Kelly Rodgers is now a resident of the State of Texas and is *sui juris*. At all relevant times, he was the superintendent of the Terrell Independent School District.

6. The court has federal question subject matter jurisdiction of this action pursuant to 28 U.S.C. §§1331 and 1367, 42 U.S.C. §1983 and 20 U.S.C. §1681(a).

7. The Court has venue of this action under 28 U.S.C. §1391 as the Defendants reside in this District and the events and omissions giving rise to the claim occurred in this District.

FACTUAL ALLEGATIONS

8. On separate occasions in the 2007-08 school year, an employee/teacher of the District, Mr. Salvador Mata , raped and sexually assaulted Jane Doe 1, Jane Doe 2 and Jane Doe 3 at J.W. Long Elementary School in Terrell Texas.

9. Dr. Kelly Rodgers, in his capacity as Superintendent of Terrell Independent School District, either knew or should have known that Salvador Mata had access to children in hidden locations in the school during times when the students should have been in other classes or recess. Nevertheless, Dr. Rodgers and Terrell Independent School District failed to supervise Salvador Mata or more importantly, the students that were in his care. In the alternative, Dr. Rodgers and Terrell Independent School District turned a blind eye to potential problems and or risks to its students.

10. Upon information and belief, this is not the first time that Salvador Mata had sexually molested students at this school and that Terrell Independent School was or should have been aware of the previous allegations and or complaints.

11. Despite the aforementioned facts the Defendants took no action against Salvador Mata until this matter was made public by Plaintiffs' parents and before then Salvador Mata continued to teach at J.W. Long Elementary School and given unfettered access to young girls at the school. At the same time, the Defendants did nothing to warn female students and their families of the known dangerous sexual propensities of Mata.

12. At all relevant times, JANE DOE 1, JANE DOE 2 and JANE DOE 3 were students at J.W. Long Elementary School.

13. JANE DOE 1, JANE DOE 2 and JANE DOE 3 were assigned to the class taught by Salvador Mata. On or about March 2, 2007 through 2008, JANE DOE 1, JANE DOE 2 and JANE DOE 3 were repeatedly sexually assaulted and raped in a classroom at J.W. Long Elementary School by Salvador Mata.

14. As a result of this rape and sexual assault, JANE DOE 1, JANE DOE 2 and JANE DOE 3 have suffered and will continue to suffer severe psychological and emotional injuries.

15. Plaintiffs have retained the undersigned counsel and have agreed to pay reasonable attorneys' fees.

COUNT I

(Violation of 42 U.S.C. 1983 - Policy, Practice or Custom Causing Constitutional Harm - Against Defendant School District)

16. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 15 above.

17. JANE DOE 1, JANE DOE 2 and JANE DOE 3 had a constitutional right not to be sexually abused while in the care of Defendant School District. Specifically, JANE DOE 1, JANE DOE 2 and JANE DOE 3 had a constitutional due process liberty interest to bodily integrity.

18. The School District had an affirmative constitutional duty to protect JANE DOE 1, JANE DOE 2 and JANE DOE 3's right to bodily integrity, including protection from sexual abuse by one its employees or agents.

19. Upon information and belief, at all relevant times Defendant School District had a longstanding policy, practice or custom of lax policies regarding teacher access to students behind closed doors. Defendant School District further had a custom or policy of lax investigation and non-response to allegations that Mata was sexually aggressive and inappropriate with female students.

20. The School District acted with deliberate indifference in the gross failure to adequately investigate Mata and/or create policies that would have prevented Mata from being alone with students unsupervised which allowed the sexual assaults to occur.

21. The School District's policy, practice or custom is also reflected in (i) failing to remove Mata from authority and control of students; and (ii) failing to impose any restrictions whatsoever on Mata's access to children.

22. As a result of the School District's policy, practice or custom, JANE DOE 1, JANE DOE 2 and JANE DOE 3 were sexually assaulted by Mata, which has caused them to suffer damages.

WHEREFORE, Plaintiffs demand judgment for compensatory damages, punitive damages, attorneys' fees and costs pursuant to 42 U.S.C. § 1988, and such other and further relief as this Court deems just and proper.

COUNT II

(Violation of 42 U.S.C. §1983 - Deficient Training Practices Causing Constitutional Harm - Against Defendant School District)

23. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 15 above.

24. The School District failed to adequately supervise its employees. Among other things, Mata was allowed to be in a situation where he was alone in a classroom with JANE DOE 1, JANE DOE 2 and JANE DOE 3. Additionally, the School District's

training practices regarding investigation and response to complaints of sexual assault were wholly inadequate. The School District's supervision and training practices were not calculated or designed to protect children from sexual abuse.

25. Failure to adequately train and supervise with regard to the risks of sexual assault upon students was an official policy of the School district.

26. The School District was deliberately indifferent to the constitutional rights of children to bodily integrity in adopting its supervision and training practices.

27. The School District's failure to train or supervise reflects a deliberate or conscious choice.

28. The foregoing deficiency in the School District's training and supervision practices caused JANE DOE 1, JANE DOE 2 and JANE DOE 3 to be sexually assaulted by Mata and suffer damages.

WHEREFORE, Plaintiffs demand judgment for compensatory damages, punitive damages, attorneys' fees and costs pursuant to 42 U.S.C. § 1988, and such other and further relief as this Court deems just and proper.

COUNT III

(Violation of Title IX, Education

Amendments of 1972 - 20 U.S.C. §1681 et seq. - Against Defendant School Board)

29. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 15 above.

30. At all relevant times, the education program or activity at J.W. Long Elementary School received federal financial assistance.

31. JANE DOE 1, JANE DOE 2 and JANE DOE 3 had a right to not be subject to sexual discrimination, harassment or abuse while they participated in that education program or activity.

32. Upon information and belief, the School District and Dr. Kelly Rodgers had actual notice of Mata's violation of rights as a result of a prior allegation or complaints.

33. Upon information and belief, the School Board and Dr. Kelly Rodgers each had authority to address the acts of abuse by Mata and institute corrective measures.

34. As a result of this inaction, JANE DOE 1, JANE DOE 2 and JANE DOE 3 were sexually assaulted by Mata.

35. JANE DOE 1, JANE DOE 2 and JANE DOE 3 have suffered damages as a result of Defendant School District's actual notice of Mata's sexual deviancy and the risk he posed to young girls, and its inaction in response.

WHEREFORE, Plaintiffs demand compensatory damages, attorneys' fees and costs pursuant to 42 U.S.C. §1988, and such other and further relief as this Court deems just and proper.

COUNT IV

(Violation of 42 U.S.C. §1983 - Against Defendant Dr. Kelly Rodgers)

36. Plaintiffs repeat and reallege the allegations set forth above in paragraphs 1 through 15 above.

37. At all relevant times, Dr. Kelly Rodgers was acting under color of state law in his supervisory capacity over Mr. Mata.

38. JANE DOE 1, JANE DOE 2 and JANE DOE 3 each had a constitutional due process liberty interest to bodily integrity. This interest included the right to be free from sexual assault by a state actor in public school.

39. JANE DOE 1, JANE DOE 2 and JANE DOE 3's constitutional right to be free from sexual assault by a teacher in a public school classroom is a clearly established right.

40. Defendant Rodgers acted with reckless and deliberate indifference to the risks of sexual abuse to the female students at J.W. Long Elementary School.

41. No reasonable similarly situated official would have exposed children to the risks of a sexual attack by Mata, as Dr. Rodgers did in this case.

42. As a result of Dr. Rodgers' acts and omissions, JANE DOE 1, JANE DOE 2 and JANE DOE 3 were raped and sexually assaulted, which has caused each of them to suffer damages.

43. By his acts and omissions, Dr. Rodgers violated JANE DOE 1, JANE DOE 2 and JANE DOE 3's constitutional right to bodily integrity in public school.

WHEREFORE, Plaintiffs demand judgment for compensatory damages, punitive damages, attorneys' fees and costs pursuant to 42 U.S.C. §1988, and such other and further relief as this Court deems just and proper.

COUNT V

((Loss of Consortium - Against Both Defendants))

44. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 43 above.

45. As a result of Defendants' violation of JANE DOE 1, JANE DOE 2 and JANE DOE 3's common law and constitutional rights, JANE DOE 1, JANE DOE 2 and JANE DOE 3's MOTHERS and JANE DOE 1, JANE DOE 2 and JANE DOE 3's FATHERS have suffered and will suffer damages, including loss of comfort, companionship and society, and pecuniary losses, consisting of, without limitation, care and treatment of JANE DOE 1, JANE DOE 2 and JANE DOE 3 and loss of earnings arising therefrom.

46. The Defendants' acts and omissions were the direct and proximate cause of JANE DOE 1, JANE DOE 2 and JANE DOE 3's suffering a permanent and total disability.

WHEREFORE, Plaintiffs, JANE DOE 1, JANE DOE 2 and JANE DOE 3's MOTHERS and JANE DOE 1, JANE DOE 2 and JANE DOE 3'S FATHERS, individually, demand compensatory damages for loss of consortium, attorneys' fees and costs pursuant to 42 U.S.C. §1988, and such other and further relief as this Court deems just and proper. Plaintiffs hereby state that at this time they seek compensatory damages in an amount not to exceed \$10,000,000 (ten million dollars) and reserves the right to amend this amount.

JURY TRIAL DEMAND

Plaintiffs demand a trial by jury and all issues so triable as a matter of right.

Dated: March 23, 2010.

Respectfully submitted,


s/ Ray Jackson

Ray Jackson

Attorney for Plaintiffs

SBN 00797754

3838 Oak lawn Ave., Ste1350

Dallas, TX 75219

214.651.6250 Office

214.651.6244 Facsimile

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
Jane Doe 1, et al

(b) County of Residence of First Listed Plaintiff Kaufman
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Ray Jackson, The Jackson Law Firm, 3838 Oak Lawn Ave., Suite 1350,
Dallas, Texas 75219

DEFENDANTS
Terrell Independent School District, et al.

3-10CV0578-N

County of Residence of First Listed Defendant Kaufman

(IN U.S. PLAINTIFF CASES, USE THE LOCATION OF THE

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

MAR 23 2010

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13951f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. 1983

Brief description of cause:

defendants were raped by their 5th grade teacher while attending school in Terrell Independent School District

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$ 10,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) (See instructions) PENDING OR CLOSED:

JUDGE

DOCKET NUMBER

DATE
03/23/2010

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____